

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
FILED
IN CLERKS OFFICE

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Luis Rivera,
Petitioner

U.S. DISTRICT COURT
DISTRICT OF MASS.

v.

David Nolan,
Respondent

MOTION FOR CHIEF JUDGE MARK L. WOLF
TO INTERVENE AND APPOINT COUNSEL

The Petitioner in this matter, proceeding pro se, asks Chief Judge Mark Wolf to intervene in this matter and appoint counsel. In support of this Motion, the petitioner state as follows:

This is a federal habeas case arising out of a Massachusetts state court conviction for two counts of first degree murder. See Commonwealth v. Rivera, 424 Mass. 266, 675 N.E.2d 791 (1997).

Proceeding pro se, the Petitioner filed this Petition on December 28, 2004. His petition was based primarily on allegedly newly discovered evidence consisting of an October 2003 affidavit from a key prosecution witness, which he properly raised in a November 2003 new trial motion in state court and exhausted in the state appellate process. The district court (Lindsay, J.) dismissed the petition on June 21, 2005, on the grounds that it was untimely.

The Petitioner sought a certificate of appealability on the

timeliness issue which was granted. See Rivera v. Nolan, C.A. No. 05-2418. On May 15, 2007, the First Circuit reversed the decision of the district court dismissing the habeas petition and ordered the district court to consider the Petitioner's argument that the petition should be deemed timely based on 28 U.S.C. § 2244(d)(1)(D).

As soon as the case was remanded to the district court, the Petitioner filed a motion for appointment of counsel (Document #23). The case was reassigned to Judge Richard Stearns, who denied the motion for counsel. Petitioner filed a motion for reconsideration (Document #25) which was also denied.

In light of the seriousness of this case (1st degree murder), the significance of the issue raised (an exculpatory affidavit from a key prosecution witness), and the fact that the First Circuit has acknowledged that the Petitioner has raised a colorable, but complicated, claim that his petition is timely, Petitioner respectfully requests that this Court intervene and appoint counsel to represent Petitioner in this matter.

Petitioner has contacted attorney Chauncey Wood, who is a member of both the Committee for Public Counsel Services post-conviction murder panel and the First Circuit CJA post-conviction panel. Attorney Wood, who has extensive experience with federal habeas petitions arising out of state court convictions, has indicated that he would be willing to be appointed to this case. Furthermore, Attorney Wood has advised Petitioner that the CJA

Board is currently in the process of creating a CJA habeas panel to provide appointed counsel to federal habeas petitioners and that he (Attorney Wood) has applied for admission to this panel. It seems to Petitioner that he would be an appropriate candidate for appointment of counsel from the new habeas panel.

For the foregoing reasons, Petitioner requests that the Honorable Chief Judge Mark Wolf intervene and appoint counsel Chauncey Wood to represent Petitioner in this matter.

Date: *September 30, 2007*

Respectfully Submitted

Luis F. Rivera 2

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cc: Charles Rankin, Esq.
(Chairman, CJA Board)
Chauncey B. Wood, Esq.